

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2745 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHREE MAROLI VIBHAG KHAND UDYOG SAHAKARI MANDLI LTD

Versus

STATE OF GUJARAT

Appearance:

None present for for Petitioners

MS PS PARMAR for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/07/97

ORAL JUDGMENT

#. The matter was called out for hearing in the first round, then in the second round, and lastly in the third round, but none put appearance on behalf of the petitioner. Heard learned counsel for the respondent and perused the Special Civil Application.

#. The petitioner No.1, a registered cooperative

society, under the Cooperative Societies Act, 1961, alongwith its Managing Director, filed this Special Civil Application in the matter of grant of exemption to the society from payment of electricity duty under the provisions of the Bombay Electricity Duty Act, 1958, (hereinafter referred to as the 'Act 1958'), from the date of generation of its own electricity.

#. The facts of the case, in brief, are that under the certificate dated 18th September 1979, the Collector of Electricity Duty, Ahmedabad, certified that the petitioner-society is an industrial undertaking entitled to exemption from payment of electricity duty under clause (vii) of sub section (2) of Section 3 of the Bombay Electricity Duty Act, 1958, with effect from 11th April 1979 to 30th November 1986. The petitioner has protested against the certificate by filing representation dated 5th October 1979. The substance of the representation is that it has claimed exemption from the payment of electricity duty under the Act 1958 from 1st December 1977 instead of 11th April 1979. The ground given in the representation was that the undertaking started its own generation of electricity in the month of December 1976. It has further been submitted that the petitioner had submitted all relevant papers about the generation of electricity from that day onwards and has also requested to grant this exemption from retrospective effect. The respondent-Collector, under its order dated 5.11.79 replied to the aforesaid representation of the petitioner wherein it has been admitted that the date of generation is 1.12.76, but as the establishment submitted the application which has been received on 11.4.79 the exemption from payment of electricity has been granted from 11.4.79 to 30.11.86, reducing the period lapsed between the date of generation and date of application as per rules. The petitioner submitted further representations and it appears that the said representations found favour with the authorities and Collector of Electricity Duty, modifying its earlier certificate, by its letter dated 22.1.81, annexure 'J' informed that the recovery of the electricity duty which was sought to be recovered from 1.1.77 to 11.4.79 will be dropped and consequently a certificate, annexure 'I' was issued to the effect that the undertaking of the petitioner is entitled to exemption from payment of electricity duty under clause (vii) of sub section (2) of Section 3 of the Act, 1958 with effect from 1.1.77 to 31.12.86. Lateron, the authority found that the exemption granted to the undertaking of the petitioner for the period from 1.1.77 to 11.4.79 is not correct and the said certificate has been withdrawn. As this has

been done without any notice to the petitioner, the petitioner approached this Court by filing Special Civil Application No.1328 of 1983 which came to be disposed of with direction to the respondent to decide the matter afresh after giving opportunity of hearing to the petitioner. The petitioner was then given show cause, as to why exemption granted for the period from 1.1.77 to 31.12.86 should not be withdrawn. After hearing the petitioners, under the impugned order dated 11.10.83, annexure 'Q', the Collector, Electricity Duty, Ahmedabad, has withdrawn the certificate dated 22.1.81 granting exemption to the petitioner from payment of electricity duty for the period from 1.1.77 to 31.12.86 and the certificate dated 18.9.79 granting exemption from payment of electricity duty for the period from 11.4.79 to 31.11.86 was ordered to be revived. The arrears of electricity duty was ordered to be paid by the petitioner alongwith interest. Hence this Special Civil Application before this Court.

#. The petitioner has come up with the case that it wrote a letter dated 1.1.77 to respondent No.2 informing that the 1st petitioner started cane crushing in its factory from 1.1.77 using electricity from their own generating set. The petitioner submitted that under clause vii of sub section (2) of Section 3 of the Act 1958, the petitioner-Society is entitled for exemption from electricity duty and as such, it requested the authority for giving exemption from paying electricity duty from the date of starting. A copy of this letter has been submitted by petitioner at annexure 'A' in this Special Civil Application. The petitioner has come up with the case that in response to the said application the 2nd respondent wrote a letter dated 14.4.77 intimating that in view of the application, the authority will visit their factory for verification of electricity duty and also directed that the documents will have to be kept ready to ascertain as to whether the petitioner No.1 has started manufacturing or not. The petitioner further stated that on 19th April 1977, the authority visited the factory and closely examined the operation of the factory and scrutinised records of the 1st petitioner and they were satisfied that the petitioner No.1 has commenced business from 1.4.77. It is not in dispute that the petitioner filed application in the prescribed form for grant of exemption from payment of electricity duty in the office of respondent No.2 only on 11.4.79. Exemption has been granted to the petitioner from 11.4.79 but on their representation it appears that the said certificate has been modified and exemption was granted from the period 1.1.77, but

subsequently the mistake committed in granting exemption from 1.1.77 has come to the notice of respondent No.2 and the certificate has been again modified. It was considered to be a case of wrong exemption. The petitioner obtained another certificate from the office of respondent No.2 and that certificate was modified under the impugned order after hearing the petitioner. So the case of the petitioner is that it filed application for grant of exemption in the office of respondent No.2 on 1.1.77, whereas the case of respondents is that this application was filed on 11.4.79. So, this is a disputed question of fact in the present case. Under the order impugned, the respondent No.2 has given finding that the petitioner has not produced any evidence whatsoever to show that it submitted application for exemption to the respondents No.2 on 1.1.77. The petitioner has not produced any evidence whatsoever on the record of this case in support of their contention that the application for grant of exemption has been submitted in the office of respondent No.2 on 1.1.77. Annexure 'A', is the copy of letter dated 1.1.77. This letter was not sent by petitioner to respondent No.2 by registered post A.D. The petitioner has also not stated in the Application how this letter has been sent by it to respondent. The petitioner has only stated that it wrote a letter to respondent No.2 dated 1.1.77, but it has not disclosed whether it was sent by ordinary post or it was personally delivered to respondent No.2. Even it is not the case of the petitioner that this letter has been sent under the Postal Certificate. In case this letter was sent by personal messenger, the petitioner has not given the name of the person who had taken this letter and delivered the same to respondent No.2. Above all, the petitioner has not given any reason why receipt of filing such important document has not been taken. The thrust of the case of petitioner is on annexure 'B', i.e. letter dated 14th April 1977 of the Electricity Duty Inspector, Surat. On the basis of this document, the petitioners have contended in the Special Civil Application that their letter dated 1.1.77 was received by respondent No.2. However, it is difficult to draw an inference that the letter dated 1.1.77 has been received by respondent No.2 on the basis of this document and the reasons are very obvious; this is not the letter of respondent No.2 who is sitting at Ahmedabad. This letter is of Electricity Duty Inspector, Surat. It is also not the case of petitioner that respondent No.2 has sent the above letter for the purpose of inspecting the factory of the petitioner with reference to grant of exemption from payment of electricity duty under clause vii of sub section (2) of

Section 3 of the Act, 1958. The respondent No.2, under its letter dated 28th November 1979, has informed the petitioner that the petitioner's letter dated 1.1.77 was not received in his office and the petitioner was asked to produce evidence in support of the alleged letter written by them. The inward register maintained by the office has not shown receipt of this letter dated 1.1.77 in the office of respondent No.2. The petitioner replied to the letter of the Commissioner dated 28th November 1979 vide its letter dated 1.12.79 and the contents of the said letter are as under:

Sub:- Exemption from payment of elec.duty.

Ref:- Your letter No.Bulsar/Ex.1.4.79/14938 dated 28.11.79

With reference to above I am to state that we were not aware of the rules and hence the application was delayed.

However we would request you to please recommend our case to Government for condonation. Our industry is run on the basis of Co-operative and hence the benefit given by Government will ultimately be passed on to farmers.....

So, from this letter, it is clear that the petitioner has not submitted the application for exemption on 1.1.77. The Managing Director of the petitioner stated that he was not aware of rules and as such the application was delayed. Reference, in this letter, was to their application dated 11.4.79. The matter does not end here. In the letter dated 1.12.79, the Managing Director of the petitioner No.1 made a request to respondent No.2 to recommend the case of the petitioner No.1 to the Government for condonation. So, these two admissions of the petitioner that it is not aware of the rules and hence the application was delayed and further request to recommend their case for condonation of such delay clinches the issue and I am satisfied that the case made out by the petitioner that it has submitted an application dated 1.1.77 is nothing but a concocted and manufactured case. The petitioner has failed to satisfactorily give out any explanation of its own letter dated 1st December 1979.

#. There are two sets of evidence on record. The first set is the letter of Electricity Duty Inspector, Surat, on which the petitioner relies and the second is the petitioner's own admission as contained in letter dated

1.12.79. When in the presence of these two sets of evidence, the authority has relied on the admission of the petitioner himself, how it can be said to be a case of any illegality committed by the said authority in passing the impugned order. Moreover, for the reasons as given out in the additional affidavit filed by the Commissioner of Electricity, Respondent No.2, it is very difficult to rely on the letter of Electricity Duty Inspector, Surat. As per the case of petitioner, the said inspector has visited the site for inspection and he prepared a report on 19th April 1977, but on the record of respondent No.2, no such report is there regarding petitioner's establishment. The petitioner submitted the application only on 11.4.79 and as such, the exemption could have been granted to it from the payment of electricity duty under clause (vii) of sub section (2) of Section 3 of the Act 1958, only from the said date. It is true that at one stage, exemption has been granted to the petitioner from 1.1.77 by modifying the certificate already issued but it is certainly a case where the authority has been misled.

#. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

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